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March 30, 2004

**VIA HAND DELIVERY**

Ms. Deborah Taylor Tate, Chairman  
TENNESSEE REGULATORY AUTHORITY  
460 James Robertson Parkway  
Nashville, Tennessee 37243

04-00097

**Re: *Petition of Nashville Gas Company, A Division of Piedmont Natural Gas Company, Inc., for Approval of Negotiated Franchise Agreement With The Metropolitan Government of The City of Nashville and Davidson County, Tennessee Pursuant to TCA § 65-4-107.***

Dear Chairman Tate:

Enclosed please find the original and thirteen (13) copies of a Petition for Approval of Negotiated Franchise Agreement with the Metropolitan Government of the City of Nashville and Davidson County, Tennessee, pursuant to TCA § 65-4-107, to be filed on behalf of our client, Nashville Gas Company, a division of Piedmont Natural Gas Company, Inc.

I am also enclosing the original and thirteen (13) copies of Kim R. Cocklin's direct testimony in support of the Company's Petition. Also enclosed is our check in the amount of \$25.00, payable to the Tennessee Regulatory Authority for the filing fee.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

Thanking you in advance for your assistance with this matter, I am

Very truly yours,



R. Dale Grimes

RDG/tn  
Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE:	)	
	)	
PETITION OF NASHVILLE GAS COMPANY,	)	
A DIVISION OF PIEDMONT NATURAL	)	
GAS COMPANY, INC. FOR APPROVAL	)	Docket No. 04-
OF NEGOTIATED FRANCHISE AGREEMENT	)	
WITH THE METROPOLITAN GOVERNMENT	)	
OF THE CITY OF NASHVILLE AND	)	
DAVIDSON COUNTY, TENNESSEE	)	
PURSUANT TO TCA § 65-4-107		

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**PETITION OF NASHVILLE GAS COMPANY FOR APPROVAL OF NEGOTIATED  
FRANCHISE AGREEMENT WITH THE METROPOLITAN GOVERNMENT OF NASHVILLE  
AND DAVIDSON COUNTY PURSUANT TO TCA § 65-4-107**

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Nashville Gas Company, a Division of Piedmont Gas Company, Inc. ("Nashville Gas" or the "Company"), through counsel and pursuant to Tennessee Code Annotated § 65-4-107, hereby requests approval by the Tennessee Regulatory Authority ("Authority") of a negotiated franchise agreement between Nashville Gas and the Metropolitan Government of the City of Nashville and Davidson County, Tennessee. In support of its Petition, Nashville Gas respectfully shows unto the Authority as follows:

1. Piedmont Natural Gas Company, Inc. is incorporated under the laws of the State of North Carolina and is engaged in the business of transporting, distributing and selling gas in the States of Tennessee, North Carolina and South Carolina. Piedmont's principal office and place of business is located at 1915 Rexford Road, Charlotte, North Carolina.

2. Piedmont conducts its natural gas distribution business in the State of Tennessee through its operating division, Nashville Gas. Nashville Gas' natural gas

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NASHVILLE, TENNESSEE**

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2. Piedmont conducts its natural gas distribution business in the State of Tennessee through its operating division, Nashville Gas. Nashville Gas' natural gas

distribution business is subject to regulation and supervision by the Authority pursuant to Chapter 4 of Title 65 of the Tennessee Code Annotated.

3. Nashville Gas has its principal offices at 665 Mainstream Drive, Nashville Tennessee, and is engaged in the business of furnishing natural gas to customers located in Nashville and the remainder of Davidson County as well as portions of the adjoining counties of Cheatham, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, and Wilson and in certain incorporated towns and cities located therein.

4. Nashville Gas is currently providing, and for the last 30 years has provided, natural gas service within the City of Nashville, Tennessee pursuant to a franchise agreement between the Company and the City of Nashville incorporated into City Ordinance 74-861 dated May 2, 1974.

5. That franchise agreement (and the authorizations contained therein) will expire in accordance with its terms on May 2, 2004.

6. In anticipation of the expiration of the existing franchise agreement authorizing service within the City of Nashville, the Company began negotiations with the Metropolitan Government of Nashville and Davidson County ("Metropolitan Government") for renewal of its franchise authority in June of 2003.

7. Those negotiations were pursued by the Company at the highest levels of management, including the Senior Vice President and General Counsel of Piedmont, and continued for a period of approximately 5 months.

8. The Metropolitan Government was assisted in these negotiations by outside counsel with national expertise in negotiating utility franchise arrangements.

9. These negotiations involved the identification and resolution of myriad issues between the Company and the Metropolitan Government and were

conducted in a completely arms-length manner. These issues included (but were not limited to) the term of the franchise, the amount, derivation and manner of franchise fee payments, surety and indemnification requirements, compliance with City Historical Commission and similar requirements, franchise fee calculation certification requirements, and dispute resolution mechanisms, among others. Each party to the negotiations was ultimately required to make concessions to the other in order to reach an agreement as to a new franchise arrangement.

10. These negotiations ultimately resulted in a form of franchise agreement acceptable to both the Company and the Metropolitan Government. This franchise agreement was then incorporated into Ordinance BL2003-36 and presented to the Metropolitan Council for approval. That Ordinance, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, was subsequently approved by the Metropolitan Council on its third reading on December 2, 2003 and signed by the Mayor of Nashville on December 3, 2003.

11. Consistent with the procedures established by the Charter of the Metropolitan Government, the Company executed its written acceptance of Ordinance BL2003-36 on December 11, 2004.

12. Ordinance BL2003-36 was then placed upon the ballot for approval by the citizens of Nashville and Davidson County in the general election conducted on February 10, 2004.<sup>1</sup>

13. That election resulted in approval of Ordinance BL2003-36 by more than a three-fifths majority of the citizens voting on the issue.

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<sup>1</sup> Under the Metropolitan Government Charter, approval of the new franchise agreement was required to be obtained by a three-fifths majority vote in an election conducted within sixty (60) days following the Company's acceptance of the franchise ordinance.

14. Following established local election procedures, the results of the February 10, 2004 election were confirmed by the Metropolitan Council on February 23, 2004.

15. Pursuant to TCA § 65-4-107, the new franchise agreement between Nashville Gas and the Metropolitan Government of the City of Nashville and Davidson County must be approved by the Authority in order to be valid. Such approval is proper where, as here, the franchise is necessary and proper for the public convenience and properly conserves the public interest.

16. In this case, Nashville Gas submits that the new franchise agreement contained in Ordinance BL2003-36 is necessary and proper for the public convenience and properly conserves the public interest on at least the following grounds:

a. The new franchise agreement establishes a long-term arrangement which secures the provision of natural gas service to citizens, businesses and governmental institutions within the City of Nashville and Davidson County.

b. The new franchise agreement ensures the continued and uninterrupted provision of high quality natural gas service by an established provider of such service to existing customers, as well as the availability of such service to new customers within the City of Nashville and Davidson County.

c. The new franchise agreement establishes adequate and proper mechanisms for access to public rights-of-way, new and existing customers, and existing service lines, transmission and distribution facilities and thereby facilitates the protection of the property and citizenry of the city of Nashville

and greater Davidson County consistent with the requirements of the Authority.

d. The new franchise agreement provides an incentive to Nashville Gas to make appropriate investments in infrastructure to provide improved and expanded natural gas service within the city of Nashville and greater Davidson County by providing Nashville Gas with the right to serve these areas for a sufficient period such that the Company can reasonably expect to recover its investment under rates approved by the Authority.

e. Payment of the franchise fees provided for in the new franchise agreement, in addition to Nashville Gas' ongoing obligation to repair excavations for repair or placement of facilities as they occur, will help to offset additional long-term expenses incurred by the Metropolitan Government during the franchise period to maintain roads and related facilities.

f. The affirmative vote approving the new franchise by more than three-fifths of the voters casting ballots on the issue in the recent election establishes the view of the impacted citizenry on the public convenience and public interest inherent in approval of the new franchise.

17. Nashville Gas hereby advises the Authority that pursuant to TCA § 65-4-105(e) Nashville Gas intends, insofar as practicable, to bill its customers subject to the franchise agreement on a pro rata basis for any "franchise payment or other payment for the use of public streets, alleys or other public places or any license, privilege, occupation or excise tax payment."

18. Nashville Gas respectfully requests that the Authority approve the franchise agreement incorporated into Ordinance BL2003-36 attached hereto as

Exhibit A on or before May 2, 2004, in order to ensure the effectiveness thereof at or before the expiration of Nashville Gas' existing franchise for Nashville and Davidson County.

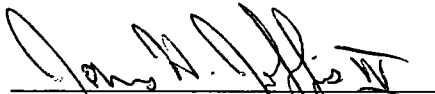
WHEREFORE, Nashville Gas Company, a division of Piedmont Natural Gas Company, Inc., respectfully requests that the Authority approve the negotiated franchise agreement incorporated into Ordinance BL2003-36, attached hereto as Exhibit A, on or before May 2, 2004.

Respectfully submitted this 30th day of March, 2004.

Nashville Gas Company, a Division  
of Piedmont Natural Gas  
Company, Inc.

By: 

R. Dale Grimes  
Bass, Berry & Sims  
AmSouth Center  
315 Deaderick Street, Suite 2700  
Nashville, Tennessee 37238  
(615) 742-6244

By: 

James H. Jeffries IV  
Jerry W. Amos  
Nelson, Mullins, Riley &  
Scarborough, L.L.P.  
Bank of America Corporate Center  
Suite 2400  
100 Tryon Street  
Charlotte, NC 28202  
(704) 417-3000



Verification

State of North Carolina

County of Mecklenburg

Kim R. Cocklin, being duly sworn, deposes and says that he is Senior Vice President, General Counsel & CCO of Piedmont Natural Gas Company, Inc, that as such, he has read the foregoing Petition and knows the contents thereof, that the same are true of his own knowledge except as to those matters stated on information and belief and as to those he believes them to be true.

Kim R Cocklin

Sworn to and subscribed before me,

This the 26<sup>th</sup> day of March, 2004

Wanda R. O'Neil  
Notary Public

My Commission Expires

April 26, 2006



# **EXHIBIT A**

**ORDINANCE NO. BL2003-36**

**An ordinance amending and extending the License and Franchise of Nashville Gas Company (formerly Nashville Gas and Heating Company), a Tennessee corporation, for an additional period.**

WHEREAS, Nashville Gas Company currently operates in Metropolitan Nashville and Davidson County pursuant to a license and franchise agreement; and

WHEREAS, unless extended, the existing franchise agreement will expire on May 2, 2004; and

WHEREAS, the citizens of Metropolitan Nashville and Davidson County will benefit from the amendment and extension of the license and franchise to Nashville Gas Company pursuant to the terms of this ordinance.

BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

SECTION 1. That the existing license and franchise of Nashville Gas Company (formerly Nashville Gas and Heating Company), a Tennessee corporation, granted by Ordinance No. 155 of the Mayor and City Council of the former City of Nashville which became effective on the 15th day of April, 1912, and which was amended and extended by Ordinance No. 50-341, as amended, of the former City of Nashville, adopted by the City Council on February 9, 1950, approved by the Mayor on February 10, 1950 and approved by the requisite number of the qualified voters in referendum on April 18, 1950 as recorded by Resolution No. 50-1189 of the Council of the former City of Nashville adopted May 2, 1950, and which was further amended and extended by Ordinance 74-861 of the Metropolitan Government of Nashville and Davidson County, adopted by the Metropolitan Council on February 19, 1974, approved by the Mayor on February 28, 1974, and approved by the requisite number of the qualified voters in referendum on May 2, 1974 as recorded by Resolution No. 74-994 of the Metropolitan Council (Ordinance No. 155, as amended by Ordinance No. 50-341 and Ordinance No. 74-861 is herein referred to as the "Existing Ordinance"), is hereby amended as set forth in this Ordinance.

SECTION 2. That in the event a three-fifths majority of the qualified voters of the Metropolitan Government of Nashville and Davidson County voting on the proposition herein directed to be submitted shall vote for the adoption of this ordinance, then Nashville Gas Company, in consideration of the rights and licenses hereby granted to said company pursuant to this ordinance, shall pay to the Metropolitan Government of Nashville and Davidson County the sum of Two Hundred Sixty Two Thousand Two Hundred (\$262,200.00) dollars and said payment shall be made by said Nashville Gas Company within ten days after said election, and it shall not exercise any of the licenses and privileges hereby granted beyond the current expiration date of the license as set forth in the Existing Ordinance until said payment shall have been made, and as a condition of the continuance of the rights granted hereby Nashville Gas Company shall additionally pay on April 1 of each of the years 2005 through 2013 the amount of Sixty Two Thousand Two Hundred (\$62,200.00) dollars in March 1, 2004 dollars increased for inflation to the due date at an assumed rate of 3.5% per annum.

SECTION 3. That the Existing Ordinance is hereby amended by deleting Section 7 and replacing it with the following:

"In constructing, repairing and operating said works, said company shall use every reasonable and proper precaution to avoid damage and injury to persons and property and provide fair

compensation for any such damage or injury, and shall, at all times and in all places, hold and save harmless the Metropolitan Government of Nashville and Davidson County and its agencies and instrumentalities and each of their respective officers, boards, commissions, commissioners, agents and employees from all and every such damage, injury, loss or expense caused or occasioned by reason of any act or failure to act of said company, in the construction, repairing or operation of said gas works or any part thereof, or in paving or repaving of any streets by reason of any acts done by said company. Gas lines shall be installed underground except where not technically feasible, and meters and related equipment shall be installed in reasonably accessible places and in a manner that minimizes damage or disruption to landscaping and customer property. In constructing, repairing and operating said works, the company shall comply with all legal and regulatory requirements including, but not limited to, those of the Metropolitan Historical Commission or any other governmental body responsible for planning, zoning, preservation, historical or similar concerns.

In the event the credit rating of the company's parent, Piedmont Natural Gas Company, Inc., is changed to BBB+ or lower by Standard & Poor's Corporation then the company shall provide financial security for compliance with its obligations hereunder through performance bonds issued by a surety company: (1) approved by the Metropolitan Government of Nashville and Davidson County having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) properly registered and licensed to conduct business in the State pursuant to a current certificate of authority to transact surety business issued by the Tennessee Commissioner of Insurance. The performance bonds shall be issued in favor of the Metropolitan Government of Nashville and Davidson County in an amount of Two Million Five Hundred Thousand (\$2,500,000.00) dollars, and shall remain in effect during the term of this license and franchise.

In the event the company fails to complete any construction, repairs, upgrades, or other work in the public rights-of-way in a safe, timely, and competent manner in accord with the provisions of a franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bonds, any damages or loss suffered by the Metropolitan Government of Nashville and Davidson County as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the franchisee, or the cost of completing or repairing the system construction, upgrade, or other work in the public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the performance bond.

Prior to performing any work on or alteration to customer property, other than emergency work, customers will be given prior notice of the nature of the proposed work and the proposed scheduling of the work. All damaged landscaping and property will be promptly repaired or replaced.

In addition to other available rights and remedies, the company and the city shall jointly appoint a person knowledgeable in the field of gas utilities and personal liability and property damage who shall be available to arbitrate disputes between the company and persons other than the Metropolitan Government of Nashville and Davidson County under this section. If no agreement can be reached on the person to appoint, a selection shall be made by the American Arbitration Association in Washington, D.C. The person so appointed shall hear all claims of persons requesting a hearing under this section promptly in Nashville and Davidson County, and shall make recommendations as to the appropriate disposition of such claims. The cost of the panel and its operations shall be borne by the company."

SECTION 4. That the Existing Ordinance is hereby amended by deleting the first sentence in Section 14 and replacing it with the following:

"That in consideration of the rights and licenses hereby granted to Nashville Gas Company, and in

addition to the payment required to be made as hereinbefore provided in Section 2, said company shall pay to the Metropolitan Government of Nashville and Davidson County five (5) per centum of its gross receipts from the sale, transportation and distribution of gas and by-products and from other services related to the sale, transportation or distribution of gas and by-products, unless and until the Metropolitan Government of Nashville and Davidson County, in accordance with the Metropolitan Charter, shall grant a license and franchise to any other company to sell and supply gas in Nashville and Davidson County and transport and distribute such gas below the surface of the streets, avenues, sidewalks, alleys and public grounds, and on the bridges and viaducts of Nashville and Davidson County, at which time all payments provided for in this section shall cease; PROVIDED, that nothing herein contained shall be construed to prevent the Metropolitan Government of Nashville and Davidson County from granting a license or franchise or similar right to any other company. Payments shall be made quarterly on or before the last day of March, June, September and December in each year, in such manner as shall be directed by the Director of Finance of the Metropolitan Government of Nashville and Davidson County. Together with or promptly following each payment, Nashville Gas Company shall deliver to the Director of Finance such financial statements, records, documents and other information as is reasonable and sufficient for the Metropolitan Government of Nashville and Davidson County to verify the correctness of the amount due. Within sixty (60) days following the end of each fiscal year of Nashville Gas Company, Nashville Gas Company shall deliver to the Director of Finance a certificate of the controller of Nashville Gas Company, verified as to accuracy by a firm of independent certified public accountants, certifying that the fees paid by Nashville Gas Company pursuant to Section 14 of this ordinance during the preceding fiscal year of Nashville Gas Company are correct and have been properly calculated in accordance with the ordinance.

SECTION 5. That the Existing Ordinance is hereby amended by deleting Section 20 and replacing it with the following:

"A failure on the part of said company to comply with the provisions of this ordinance, or failure to comply with an order or request of the Department of Public Works issued thereunder, shall subject said company to a fine of not less than \$200.00 nor more than \$1,000.00 for each offense for each day such offense has occurred or is continuing; PROVIDED, HOWEVER, that this section shall not be construed to conflict with any penalty otherwise provided herein."

SECTION 6. That the Existing Ordinance is hereby amended by adding Section 22 as follows:

Section 22. Said Company shall conduct its business and, when utilizing any streets, avenues, sidewalks, alleys or public highways or places, or any other public property, conduct operations relating to such property in full compliance with the Americans with Disabilities Act ("ADA") and Architectural and Transportation Barriers Compliance Board, Federal Register 36 CFR Parts 1190 and 1191, Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines; proposed rule dated November 16, 1999, which has been adopted by the Metropolitan Government of Nashville and Davidson County. In addition, all communication is to be provided in accordance with the requirements of the Metropolitan Code Section 2.212, titled Effective Communication with Individuals with a Disability.

SECTION 7. That the Existing Ordinance is hereby amended by adding Section 23 as follows:

Section 23. It is the policy of the Metropolitan Government of Nashville and Davidson County not to discriminate on the basis of age, race, sex, color, national origin or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services and activities. With regard to all aspects of this license and franchise, said company certifies and warrants it will comply with this policy.

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the conduct

of its business or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Nashville Gas Company or in the employment practices of the Metropolitan Government of Nashville and Davidson County's licensees, franchisees or contractors. The company shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

SECTION 8. That references in the Existing Ordinance to the board of public works or to any other department, board or agency of the Metropolitan Government of Nashville and Davidson County shall refer to the then current applicable department, board or agency.

SECTION 9. That the license and franchise granted to Nashville Gas Company by the Existing Ordinance, as amended hereby, is hereby renewed and extended for a period of ten years from and after the date of the approval of this Ordinance by the electors of the Metropolitan Government of Nashville and Davidson County, and for four additional consecutive five-year periods thereafter (each of the four additional periods being an "Additional Period"), provided that no Additional Period shall become effective unless, prior to the commencement of the Additional Period (i) the Metropolitan Council shall have adopted a resolution affirming the continuance of the license and franchise granted by this Ordinance and (ii) Nashville Gas Company shall have paid to the Metropolitan Government of Nashville and Davidson County the sum of Sixty Two Thousand Two Hundred (\$62,200.00) dollars in May, 2004 dollars, increased for inflation to the due date at the rate of 3.5% per annum, and as a condition of the continuance of the rights granted hereby Nashville Gas Company shall additionally pay on April 1 of each of the remaining four years of the Additional Period the amount of Sixty Two Thousand Two Hundred (\$62,200.00) dollars in March 1, 2004 dollars, increased for inflation to the due date at the rate of 3.5% per annum, in each case subject to the continuing obligations and continuing terms and conditions of the said franchise as set out in the Existing Ordinance, as amended by this ordinance, which shall remain in full force and effect throughout the period of the said ten year renewal and extension or Additional Period, if applicable. If the conditions for the effectiveness of any Additional Period are not satisfied as required herein, then the license and franchise granted by this Ordinance shall terminate on the expiration date of the ten-year extension period or the then effective Additional Period, whichever is applicable. The license and franchise granted hereunder is irrevocable, subject to the terms of, and the rights of the Metropolitan Government of Nashville and Davidson County under, the Existing Ordinance, as amended by this Ordinance.

SECTION 10. That the said license and franchise, as amended, renewed and extended, shall at all times be subject to the terms, conditions and obligations set out and contained in Article 17 of the Charter of the Metropolitan Government of Nashville and Davidson County.

SECTION 11. That within ten days after the final approval of this ordinance Nashville Gas Company shall by its legally constituted representatives, file with the Metropolitan Clerk a written acceptance of this extension grant, with all of its terms, limitations and requirements, together with a guaranty of performance of the obligations of the company under Ordinance No 155, as amended, by the company's parent, Piedmont Natural Gas Company, Inc., and a failure so to accept the same and deliver said guaranty within said time shall, of itself, work a revocation of this renewal and extension grant.

SECTION 12. That in the event of the acceptance of this Ordinance by Nashville Gas Company, as hereinbefore provided in Section 8 and the payment to the Metropolitan Election Commission of an equitable portion of the expenses of the primary election, which portion of such expenses of the primary election shall be determined by the Metropolitan Election Commission, then this ordinance shall be submitted to the qualified voters of the Metropolitan Government of Nashville and Davidson County at an election to be held on February 10, 2004 provided such primary election

occurs more than sixty days after the date of the unconditional acceptance of said extended franchise by Nashville Gas Company, such election is to be held at the same time and in connection with the primary election on February 10, 2004 in accordance with the provisions of the law governing such elections and the provisions of Article 17 of the Metropolitan Charter. The ballot at such election shall contain a brief statement of the purposes of this ordinance and shall submit to the voters the following question:

Do you approve Ordinance No. \_\_\_\_\_ of the Council of the Metropolitan Government of Nashville and Davidson County amending and extending the license and franchise of the Nashville Gas Company?

Yes \_\_\_\_

No \_\_\_\_

The returns of such election shall be canvassed and declared as provided by law. This ordinance shall become effective only in the event it is approved by three-fifths of the electors voting thereon in such election, and if so approved such license and franchise shall be extended as hereinabove provided without requiring the payment of any consideration therefore other than those payments required by this ordinance and the Existing Ordinance, as amended by this Ordinance No. \_\_\_\_.

This ordinance shall be published in full, one publication to appear in the Nashville Tennessean and one publication in the \_\_\_\_\_. Said publication shall be made not more than seven days nor less than three days before said election.

SECTION 13. This Ordinance shall take effect from and after its passage and its approval by the electors as required by Section 8 and the Metropolitan Charter, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Sponsored by: Brenda Gilmore

**Amendment No. 1**

**To**

**Ordinance No. BL2003-36**

Mr. President:

I move to amend Ordinance No. BL2003-36 as follows:

1. By amending Section 12 by deleting the following ballot question:

"Do you approve Ordinance No. \_\_\_\_ of the Council of the Metropolitan Government of Nashville and Davidson County amending and extending the license and franchise of the Nashville Gas Company?

Yes \_\_\_\_

No \_\_\_\_"

And substituting in lieu thereof the following new ballot question:

"Do you approve Ordinance No. BL2003-36 adopted by the Council of The Metropolitan Government of Nashville and Davidson County on December 2, 2003, and approved by the Mayor, amending and extending the license and franchise of the Nashville Gas Company?

Yes \_\_\_\_  
 No \_\_\_\_"


2. By amending Section 12 by deleting the following provisions wherein they appear:

"This ordinance shall be published in full, one publication to appear in the Nashville Tennessean and one publication in the \_\_\_\_\_. Said publication shall be made not more than seven days nor less than three days before said election."

And substituting in lieu thereof the following new provisions relative to publication:

"This ordinance shall be published in the The Tennessean pursuant to and in compliance with the provisions of T.C.A § 2-12-111."

Sponsored by: Brenda Gilmore

LEGISLATIVE HISTORY	
Introduced:	October 21, 2003
Passed First Reading:	October 21, 2003
Referred to:	Budget & Finance Committee Public Works Committee
Passed Second Reading:	November 18, 2003
Passed Third Reading:	December 2, 2003
Approved:	December 3, 2003
By:	

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[Charitable Solicitations](#) | [Lobbyists](#) | [Committee Meeting Schedule](#) | [Forms](#) | [Home](#)**

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Send error reports to [webmaster@nashville.gov](mailto:webmaster@nashville.gov)

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Last Modified 12/03/2003 16:41:26



## **EXHIBIT B**

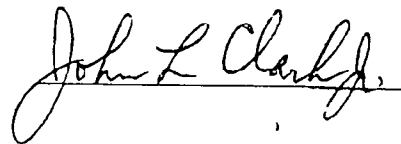
UNCONDITIONAL ACCEPTANCE OF ORDINANCE  
BY NASHVILLE GAS COMPANY

The Metropolitan Government of Nashville  
and Davidson County  
c/o the Metropolitan Clerk  
Metropolitan Courthouse  
Nashville Tennessee

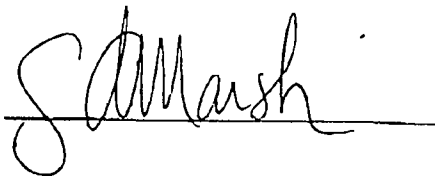
As provided in Section 17.02 of the Charter of The Metropolitan Government of Nashville and Davidson County, and in accordance with the requirements of Ordinance No. BL 2003-36 passed on the third and final reading by The Metropolitan Council of the Metropolitan Government of Nashville and Davidson County on December 2, 2003, and approved by the Metropolitan County Mayor on December 3, 2003, Nashville Gas Company unconditionally accepts the extension grant of its license and franchise with all the terms, limitations and requirements set out in the said Ordinance No. BL 2003-36, this 11<sup>th</sup> day of December, 2003.

NASHVILLE GAS COMPANY

By:



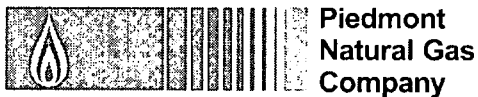
Attest



**Before The  
Tennessee Regulatory Authority  
Docket No. 04-\_\_\_\_\_**

**Direct Testimony  
of  
Kim R. Cocklin**

**On Behalf Of  
Nashville Gas Company,  
a division of  
Piedmont Natural Gas Company, Inc.**



1 **Q. Please state your name and business address.**

2 A. My name is Kim R. Cocklin, and my business address is 1915 Rexford Road, Charlotte,  
3 North Carolina.

4 **Q. By whom and in what capacity are you employed?**

5 A. I am employed by Piedmont Natural Gas Company, Inc. ("Piedmont" or the "Company")  
6 as Senior Vice President, General Counsel and Chief Compliance Officer.

7 **Q. Please describe your educational and professional background.**

8 A. I received a Bachelor of Science degree in Psychology and Administration of Justice in  
9 1973 and a Masters degree in Administration of Justice in 1975 from Wichita State  
10 University. I have also received a Juris Doctorate degree from Wahburn University in  
11 1981. From 1984 to 1995 I was employed by Texas Gas Transmission Corporation, an  
12 interstate natural gas pipeline, eventually attaining the positions of Senior Vice President  
13 and General Counsel. From 1995 through 2003 I was employed by Williams Gas  
14 Pipeline as Senior Vice President Planning, Rates and Regulatory, Business  
15 Development. In February, 2003, I accepted my current position at Piedmont.

16 **Q. Have you previously offered testimony in any regulatory proceedings?**

17 A. Yes. I have previously testified before the Indiana Utility Regulatory Commission.

18 **Q. Are you a member of any professional associations?**

19 A. Yes, I am a member of the American Bar Association and the Kentucky Bar Association.  
20 I am also a member of the legal committee of the American Gas Association.

21 **Q. What is the purpose of your testimony in this case?**

22 A. The purpose of my testimony is to present information to the Authority relating to the

1 circumstances and substance of the recently approved franchise agreement entered into  
2 between Nashville Gas and the Metropolitan Government of the City of Nashville and  
3 Davidson County ("Metropolitan Government")

4 **Q. Could you please explain the circumstances that caused a need for the new**  
5 **franchise agreement between Nashville Gas and the Metropolitan Government?**

6 A. Yes. Under Section 65-26-101 of the Tennessee Code Annotated, Nashville Gas is  
7 required to have the consent of the City of Nashville, in the form of a municipal  
8 ordinance, in order to enter onto the streets and alleys of Nashville for the purpose of  
9 placing, maintaining, or expanding its natural gas distribution and transmission facilities.  
10 Nashville Gas has been providing natural gas service to the City of Nashville for the last  
11 thirty years pursuant to such a consent incorporated into City Ordinance 74-861 enacted  
12 on May 2, 1974. Pursuant to the terms of that Ordinance, the existing authorization to  
13 enter onto the property of the City of Nashville and to provide natural gas service therein  
14 will expire on May 2, 2004. As such, under Tennessee law, a new franchise agreement is  
15 necessary in order for Nashville Gas to continue its provision of service to the City of  
16 Nashville (and Davidson County) into the future.

17 **Q. When did Nashville Gas begin pursuing a new franchise arrangement with**  
18 **Nashville and Davidson County?**

19 A. In June of last year the Company started executive level discussions with the  
20 Metropolitan Government for the purpose of initiating negotiations for a new franchise  
21 arrangement.

22 **Q. Please describe how those negotiations were started?**

1 A. Initial discussions were undertaken both in person and through correspondence and  
2 focused on establishing the mutual need and desire for a continuation of natural gas  
3 service to Nashville and Davidson County by the Company. That issue was resolved in  
4 favor of the continuation of service by Nashville Gas.

5 **Q. What happened once it was established that both the Metropolitan Government**  
6 **and Nashville Gas were desirous of a continuation of natural gas service to**  
7 **Nashville and Davidson County by the Company?**

8 A. At that point, the Metropolitan Government retained the New York law firm of Hawkins,  
9 Delafield and Wood, a firm with extensive national experience in municipal natural gas  
10 franchise agreements, to represent them in negotiations with the Company. Negotiations  
11 then proceeded between Nashville Gas and the Metropolitan Government with respect to  
12 the individual provisions of a new franchise arrangement. These negotiations were  
13 conducted primarily by Mr. Ron Grosser of the Hawkins Delafield firm on behalf of the  
14 Metropolitan Government and by me on behalf of the Company.

15 **Q. How were these negotiations pursued?**

16 A. The Metropolitan Government initially provided us with a draft franchise ordinance  
17 which contained its proposed terms. After a careful review of that document, Nashville  
18 Gas identified a number of issues and/or concerns it had with the draft ordinance. These  
19 included concerns over: (1) whether the extension agreement needed to be revocable or  
20 irrevocable in nature, (2) the amount, derivation and manner of franchise fee payments;  
21 (3) certain surety and indemnification provisions proposed by the Metropolitan  
22 Government; (4) compliance with various requirements of the City Historical

1 Commission and other governmental agencies responsible for planning, zoning,  
2 preservation, and similar matters; (5) franchise fee certification requirements; (6)  
3 dispute resolution provisions; and (7) the timing of franchise fee payments.

4 **Q. How were these issues resolved?**

5 A. Through multiple and protracted discussions with Mr. Grosser, each of these issues was  
6 addressed and resolved as a package settlement in a manner satisfactory to the Company  
7 during the course of the negotiations. Specifically, the Company obtained an agreement  
8 with the Metropolitan Government on acceptable terms and conditions to (1) establish  
9 the franchise as an irrevocable franchise identified in Section 8 of the Franchise  
10 Ordinance; (2) pay a fee annually during the thirty year terms of the agreement rather  
11 than in lump sum payments made at the beginning of the initial 10 year term and then  
12 every five years thereafter; (3) not to increase the current franchise fee of 5% of gross  
13 receipts; (4) provide for compliance by the Company with regulations of certain  
14 governmental bodies responsible for planning, zoning, preservation, historical and  
15 similar matters; (5) reduce the amount of the performance bond requested; and (6)  
16 require certification of the annual franchise fee payments by the Company's Controller  
17 rather than its CEO.

18 **Q. Is the Company satisfied with the negotiated resolution of these issues?**

19 A. Yes. Although I believe it is safe to say that neither Nashville Gas nor the Metropolitan  
20 Government got everything it wanted out of the negotiations, both parties were ultimately  
21 able to agree with the negotiated result and that result is reflected in Ordinance No.  
22 BL2003-36 which was approved by the Metropolitan Government on December 2, 2003

1 and accepted by Nashville Gas on December 11, 2003. Copies of that Ordinance and  
2 Nashville Gas' acceptance thereof are attached to the Company's Petition in this  
3 proceeding and incorporated herein by reference as Nashville Gas Exhibits \_\_\_\_ (KRC-  
4 1) and \_\_\_\_ (KRC-2)

5 **Q. What happened after the Metropolitan Government enacted Ordinance**  
6 **BL2003-36 and Nashville Gas accepted the franchise terms reflected in that**  
7 **Ordinance?**

8 A. Under the Charter of the Metropolitan Government, the Ordinance was required to be  
9 approved by a three-fifth's majority vote of the citizens of Nashville and Davidson  
10 County. A vote on the Ordinance was held in conjunction with the Presidential Primary  
11 elections conducted on February 10, 2004

12 **Q. What was the result of that election?**

13 A The franchise Ordinance was approved by more than a three-fifths majority of the voters  
14 participating in that election. The results of that election were confirmed by the  
15 Metropolitan Government on February 23, 2004

16 **Q. Does approval by the voters make the new franchise effective?**

17 A No. Under Section 65-4-107 of the Tennessee Code Annotated, Ordinance BL2003-36 is  
18 not valid until approved by this Authority

19 **Q. What is the standard to be utilized by the Authority in determining whether to**  
20 **approve Ordinance BL2003-36?**



1 A. Under the statute, the Authority is authorized to approve the Ordinance if it finds that it  
2 "is necessary and proper for the public convenience and properly conserves the public  
3 interest."

4 **Q. In your opinion, are the franchise terms set forth in Ordinance BL2003-36**  
5 **necessary and proper for the public convenience and in the public interest?**

6 A. Yes, on a number of grounds.

7 First, the new franchise terms reflected in Ordinance BL2003-36 will establish a long-  
8 term arrangement through which the current and future residents, business enterprises  
9 and governmental facilities located within Nashville and Davidson County will be able to  
10 receive, under the supervisory jurisdiction of the Authority, the benefits of continuing  
11 natural gas service provided by the Company for an extended period. This arrangement  
12 will help ensure the continuing availability of high-quality natural gas service to  
13 Nashville and Davidson County for the foreseeable future

14 Second, the new franchise facilitates the provision of such natural gas service to  
15 Nashville and Davidson County by an established and proven provider of that service  
16 well known to both the Metropolitan Government and this Authority and possessing the  
17 requisite expertise, facilities, systems and gas supply and transportation assets necessary  
18 to provide such service.

19 Third, the new franchise arrangement establishes adequate and proper mechanisms for  
20 access by the Company to public rights-of-way, new and existing customers, and existing  
21 service lines, transmission and distribution facilities. These mechanisms help to ensure  
22 that Nashville Gas is able to provide both adequate and efficient service and to comply

1 with the requirements of this Authority to ensure the safety and protection of residents  
2 and property within Nashville and Davidson County.

3 Fourth, the various other protective provisions set forth in the new franchise arrangement  
4 provide useful and important tools for the Metropolitan Government to ensure that its  
5 citizens are benefited and not economically harmed by the activities of Nashville Gas  
6 within Nashville and Davidson County.

7 Fifth, the new franchise arrangement provides an incentive for Nashville Gas to invest in  
8 infrastructure needed to provide improved and expanded service within Nashville and  
9 Davidson County by ensuring that the Company will have the right to provide service  
10 within these areas for a sufficient period in order to permit Nashville Gas the opportunity  
11 to recover the capital investment in such facilities under the rates approved by the  
12 Authority.

13 Sixth, payment of the franchise fees provided for in the new franchise agreement, in  
14 addition to Nashville Gas' ongoing duty to repair excavation work as it is performed, will  
15 act to offset long-term road maintenance expenses that may be incurred by the  
16 Metropolitan Government during the term of the new franchise arrangement.

17 Seventh, the affirmative vote of more than three-fifths of the electorate voting on the  
18 issue in the February 10, 2004 Presidential Primary provides conclusive evidence that the  
19 new franchise arrangement is in the public interest.

20 **Q. Could you please summarize your thoughts on the public convenience issue?**

21 A. Yes. Approval of the new franchise arrangement between Nashville Gas and the  
22 Metropolitan Government will ensure that the residents, businesses and governmental

1 entities residing and operating within Nashville and Davidson County continue to receive  
2 high-quality, safe, and economic natural gas service from a provider with a long and  
3 successful history of providing that service to these areas. The franchise ordinance also  
4 provides substantial protections to the citizens of Nashville and Davidson County while  
5 concurrently offering the Company a positive incentive to provide ongoing and expanded  
6 natural gas service to this area. That service will contribute to a stable infrastructure and  
7 expanded economic opportunity and will be beneficial to customers by bringing the  
8 desirable attributes of natural gas service to Nashville and Davidson County for some  
9 time into the future.

10 **Q. Do you know of any facts that would indicate that the new franchise arrangement**  
11 **reflected in Ordinance No. BL2003-36 is not in the public interest?**

12 A No

13 **Q. What are you asking the Authority to do in this proceeding?**

14 **A.** Based on the facts discussed above, we are asking the Authority to approve the new  
15 franchise agreement between Nashville Gas and the Metropolitan Government as  
16 reflected in Ordinance No. BL2003-36 on or before May 2, 2004.

17 **Q. Do you have anything further to add to your testimony?**

18 A Not at this time